



STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
ARCHITECTURE AND ENGINEERING DIVISION

1520 East Sixth Avenue • P.O. Box 200103 • Helena, Montana 59620.0103

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STANDARD FORM OF CONTRACT FOR CONSTRUCTION MATERIALS TESTING

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO THE UNIFORM ARBITRATION ACT, MCA TITLE 27 CHAPTER 5

This CONTRACT, between the MATERIALS TESTING ENTITY (as stated herein below) and the STATE OF MONTANA, acting by and through its DIRECTOR, DEPARTMENT OF ADMINISTRATION, hereinafter called the OWNER. WITNESSETH, that the Materials Testing Entity and the Owner for the consideration hereinafter named agree as follows:

ARTICLE 1. SCOPE OF WORK. The Materials Testing Entity's Construction Services shall consist of all effort necessary to accomplish the Scope of Work described in the Contract Documents for Construction and as directed by the Owner in accordance with the attached proposal for the following project:

ARTICLE 2. TIME OF COMPLETION. The Work to be performed shall be coordinated with the Owner, Agency, Construction Contractor, and Architect/Engineer.

Services will be provided for the entire construction duration of the project.

ARTICLE 3. THE CONTRACT SUM. The Owner shall pay the Materials Testing Entity in current funds for the performance of the Work, subject to additions and/or deductions made by future negotiations to be agreed upon in writing, the Contract Sum of:

ARTICLE 4. DOCUMENTS. The Materials Testing Entity shall prepare and submit to the Owner, Architect/Engineer, and Contractor, all documents consisting of reports, findings, analysis, , and other similar documents necessary to define the quality and results of materials, products of construction, and the Contractor's performance in those areas defined by the Contract Documents and as directed by the Owner.

ARTICLE 5. CONSTRUCTION.

- a. The Materials Testing Entity shall provide administration of its services in accordance with the Contract Documents.
- b. The Materials Testing Entity shall be the representative of the Owner throughout the duration of this Contract and as such shall advise and consult with the Owner. The Materials Testing Entity shall have authority to act on behalf of the Owner to the extent provided in the General Conditions of the Construction Contract unless otherwise modified in writing.
- c. The Materials Testing Entity shall consult with the Architect/Engineer regarding the requirements of the Plans and Specifications.
- d. The Materials Testing Entity shall advise the Owner and Architect/Engineer of any and all work that, in the opinion of the Testing Entity should be rejected and, if in his reasonable opinion, it may be necessary to stop work. The Owner will issue any Stop Work Orders to the Contractor.

ARTICLE 6. CONTRACT TYPE AND OTHER RESPONSIBILITIES.

- a. This Contract is a not to exceed amount for all Services and Responsibilities required to complete the Scope and represents the complete agreement between the parties. If there are services required beyond the scope of this Contract, those services will be negotiated. Services beyond the scope of the Contract must be authorized in writing by the Owner before the work is performed. By signature on this Contract, the declaration is made that the Materials Testing Entity is professionally qualified, registered, and licensed to practice in the State of Montana.
- b. The Materials Testing Entity shall review the Contract Documents and make recommendations for the requirements of the project.
- c. The Materials Testing Entity shall be responsible for the professional quality, technical accuracy, and the coordination of all reports, documents and other services furnished under this Contract. The Materials Testing Entity shall, without additional compensation, correct or revise any errors, deficiencies or omissions in the reports, documents, and other services.
- d. Neither the Owner's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract. The Materials Testing Entity shall remain liable to the Owner for any and all damages caused by the Materials Testing Entity's negligent performance of any of the services furnished under this Contract.
- e. The rights and remedies of the Owner provided for under this Contract are in addition to any other rights and remedies provided by law.

ARTICLE 7. INSURANCE.

- a. **Hold Harmless and Indemnification:** The Materials Testing Entity shall indemnify and hold harmless the State of Montana from and against all damages, claims and liability arising out of the negligence, willful acts, errors, or omissions of the Materials Testing Entity, its officers, agents, consultants, and employees, including all judgments, awards, losses, expenses, reasonable costs and reasonable attorneys' fees. The State of Montana shall indemnify and hold harmless the Materials Testing Entity from and against all damages, claims and liability arising out of the negligence, willful acts, errors, or omissions of the State of Montana, its officers, agents, consultants, and employees, including all judgments, awards, losses, expenses, reasonable costs and reasonable attorneys' fees.
- b. **Materials Testing Entity's Insurance:** **insurance required under all sections herein shall be in effect for the duration of the Contract.** Insurance required herein shall be provided by insurance policies issued only by insurance companies currently authorized to do business in the State of Montana. No Materials Testing Entity or Subcontractor shall commence Work under this Contract until all required insurance has been obtained. During the term of this Contract, the Materials Testing Entity shall, not less than thirty (30) days prior to the expiration date of any policy for which a certificate of insurance is required, deliver to the Owner a certificate of insurance with respect to the renewal insurance policy. The Materials Testing Entity shall furnish one copy of insurance certificates of insurance herein required, which shall specifically set forth evidence of all coverage required by these Contract documents and which shall be signed by authorized representatives of the insurance company or companies evidencing that insurance as required herein is in force and will not be canceled, limited, or restricted without thirty (30) days' written notice by certified mail to the Materials Testing Entity and the Owner. The Materials Testing Entity shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. Additionally, all certificates shall include the project name and A/E project number.
- c. The Materials Testing Entity shall carry **Workers' Compensation Insurance**. Such Workers' Compensation Insurance shall protect the Materials Testing Entity

from claims made by its own employees, the employees of any subcontractor, and also claims made by anyone directly or indirectly employed by the Materials Testing Entity or Subcontractor. The Materials Testing Entity shall require each Subcontractor similarly to provide Workers' Compensation Insurance.

- d. The Materials Testing Entity shall carry **Commercial General Liability Insurance** including coverage for premises, operations, independent contractor's protective, products, and completed operations, broad form property damage, and comprehensive automobile liability insurance with not less than the following limits of liability:

\$1,000,000 per occurrence; aggregate limit of \$2,000,000

The **Commercial General Liability Insurance** and **Automobile Liability Insurance** shall provide coverage for both bodily injury, including accidental death and property damage which may arise out of the Work under this Contract, or operations incidental thereto, whether such Work and operations be by the Materials Testing Entity or by any Subcontractor or by anyone directly or indirectly employed by the Materials Testing Entity or the Subcontractor, or by anyone for whose acts any of them may be liable. The Materials Testing Entity shall maintain completed operations liability insurance required herein for a period of not less than one (1) year after final payment or anytime the Materials Testing Entity goes on to the location of the project.

The Materials Testing Entity's insurance coverage shall be PRIMARY insurance as respects the State, its officers, elected and appointed officials, employees, and volunteers. Any insurance or self-insurance maintained by the State, its officers, elected and appointed officials, employees, and volunteers shall be excess of the Materials Testing Entity's insurance and shall not contribute to it.

ARTICLE 8. RELATIONSHIP, SUCCESSORS AND ASSIGNS, TERMINATION OF THE CONTRACT, OWNERSHIP OF DOCUMENTS.

- a. The relationship of Materials Testing Entity to Owner under this Contract is that of an Independent Contractor. The Materials Testing Entity is not an employee of the State of Montana, is not carrying out the regular business of the State and is not subject to the supervision and control of the State. Each of the parties will be solely and entirely responsible for their own acts and the acts of their employees. No benefits are provided by the State of Montana to the Materials Testing Entity or the Materials Testing Entity's employees.
- b. The Owner and the Materials Testing Entity, each binds himself, his partners, successors, legal representatives, and assigns to the other party to this Contract, and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Contract. Neither the Owner nor the Materials Testing Entity shall assign or transfer his interest in the Contract without written consent of the other.
- c. All documents developed under this Contract are and shall become the property of the Owner.

ARTICLE 9. RECORDS, CONTINGENT FEES, EXTENT OF CONTRACT, VENUE, INDEMNIFICATION, EMPLOYMENT.

- a. The State shall have access to all records, correspondence, and files of the Materials Testing Entity, its employees, engineers, or consultants pertaining to the contract administration undertaken on behalf of the State. This access shall be continuing and survive the termination of the Contract for either cause or convenience. Such records shall be kept in a generally recognized format and shall be available to the Owner, Legislative Auditor, the Legislative Fiscal Analyst or his authorized representative at mutually convenient time for a period of three (3) years after completion and acceptance of the Project by the Owner.
- b. The Materials Testing Entity warrants that he has not employed or retained any person, partnership, or corporation, other than a bona fide employee or agent working for the Materials Testing Entity to solicit or secure this Contract, and that he has not paid or agreed to pay any person, partnership, or corporation, other than a bona fide employee or agent, any fee, or any other consideration, contingent upon the making of this Contract.
- c. This Contract represents the entire and integrated agreement between the Owner and the Materials Testing Entity and supersedes all prior negotiations, representations or agreements, whether written or oral. This Contract may be amended only by written instrument signed by both Owner and Materials Testing Entity.
- d. In the event of mediation, arbitration, or litigation concerning the Contract, venue shall be the First Judicial District in and for the County of Lewis and Clark, Montana, and the Contract shall be interpreted according to the Laws of Montana.
- e. The Materials Testing Entity shall be familiar with and be responsible for and adhere to all Federal and State requirements regarding employment practices. All hiring and other employment practices of the Materials Testing Entity shall be in accordance with Federal Equal Employment Opportunity Commission regulations and shall be nondiscriminatory, based on merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

ARTICLE 10. DISPUTE RESOLUTION.

Any and all controversies, disputes, claims or other matters between the parties arising out of or related to this Contract, or breach thereof, shall be decided and settled by arbitration in accordance with the Uniform Arbitration Act, Title 27, Chapter 5 of Montana Code Annotated. Each party shall be responsible for and bear its own costs of any arbitration, except those awarded by arbitration. Good faith effort and attempt shall be made by both parties to decide and settle any and all controversies, disputes, claims or other matters prior to initiating arbitration proceedings either through negotiation or mediation. Mediation shall be conducted by a neutral third party in accordance with rules agreed to in writing by the parties. The complaining party shall, at a minimum, provide notice of any claim, dispute or potential for legal proceedings pursuant to the applicable statute(s) of limitations as provided in Montana law. However, a complaining party may demand initiation of a resolution through arbitration upon 15 calendar days' written notice to the other party of the conditions that give rise to the complaint or dispute. Lewis & Clark County, State of Montana shall be the venue for all arbitration proceedings. Montana law shall govern any arbitration. All arbiters shall be certified by the American Arbitration Association. When written demand for arbitration has been made, the manner of arbitration with regard to the selection and number of arbiters shall be mutually agreed upon in writing by both parties. If the parties cannot agree, petition shall be made to the First Judicial District Court of Lewis & Clark County for selection of arbiter(s). During arbitration and resolution of any dispute, complaint or claim, the Materials Testing Entity shall continue with scheduled performance of work in accordance with this Contract. The Owner shall continue to make payment in accordance with the provisions of this Contract except in those areas involving the complaint, dispute or claim.

This Contract entered into as of the day and year written:

MATERIALS TESTING ENTITY:

(Company)

(Address)

(City, State, Zip)

(Signature)

(Date)

Incorporated? _____

OWNER: STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
ARCHITECTURE & ENGINEERING DIVISION
1520 East Sixth Avenue, P.O. Box 200103
Helena, Montana 59620-0103

Director/Administrator/Project Manager

Date